

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DEAN VARGO, an adult incompetent,)	
by his parent and natural guardian,)	
PATRICIA A. VARGO,)	
Plaintiff,)	
)	
vs.)	Civil Action No. 06-1574
)	
PLUM BOROUGH, et al.,)	
Defendants.)	

ORDER

AND NOW, this 15th day of May, 2007, after plaintiff, Dean Vargo, an adult incompetent, by his parent and natural guardian, Patricia A. Vargo, filed an action in the above-captioned case, and after a partial motion to dismiss was submitted by the defendants, and after a Report and Recommendation was filed by the United States Magistrate Judge granting the parties ten days after being served with a copy to file written objections thereto which raise substantially the same arguments rejected by the magistrate judge, and upon consideration of the objections filed by the plaintiff and the response to those objections filed by the defendants, and upon independent review of the motion and the record, and upon consideration of the Magistrate Judge's Report and Recommendation (Docket No. 15), which is adopted as the opinion of this Court, except that this court will dismiss Count III without prejudice to the ability of plaintiff to seek leave of court to amend his complaint prior to the close of discovery to assert a state law claim based upon willful misconduct.

IT IS ORDERED that defendants' partial motion to dismiss (Docket No. 5) is granted and Count II of the complaint is dismissed with prejudice by reason of governmental

immunity. Count III is dismissed on the same grounds but without prejudice to plaintiff's ability, prior to the close of fact discovery, to seek leave of court to amend his complaint to assert a state law claim based upon willful conduct.

/s/ Joy Flowers Conti
Joy Flowers Conti
United States District Judge